IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9901 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURAJSINH ALIAS SURU ALIAS SURESH LALLUSINH RAJPUT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9901 of 2003

MS KRISHNA U MISHRA for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 05/11/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Ahmedabad city on

23.6.2003 in exercise of powers conferred upon him under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). The petitioner was declared as "Bootlegger" and he was actually detained in jail from 23.6.2003.

The grounds served upon the petitioner and placed on record reveal that the detaining authority relied upon four cases registered against the petitioner under sec. 66(1)(B), 65(E) and 81 of the Bombay Prohibition Act on 23.2.2002, 13.5.2002, 3.1.2003 and 20.6.2003 whereby it is alleged that some quantity of country liquor was found in each occasion from the possession of the petitioner. In addition to this, the detaining authority placed reliance upon two statements recorded by the sponsoring authority in-camera on 21.6.2003 and verified by the detaining authority on 22.6.2003 revealing the incidents taken place on 18.5.2003 and 5.6.2003. From the above material, the petitioner was considered to be a bootlegger and his activities to be prejudicial to the maintenance of pubic order and hence, the order impugned in this petition came to be passed by the detaining authority.

Mr Pandya for Ms. KU Mishra for the petitioner and ld. AGP Mr Chauhan for the respondents were heard at length. Affidavit in reply filed by the detaining authority and placed on record is also taken into consideration.

Various contention were raised on behalf of the petitioner and controverted by ld. AGP. From the rival contentions, it appears that the matter can be considered and disposed of on sole contention whether in the facts and circumstances of the case, the activities of the detenu amounted to prejudicial to the maintenance of public order. Ld. advocate for the petitioner vehemently contended that the cases registered against the petitioner are under Prohibition Act and it could hardly be said that those cases are the activities on the part of the petitioner so as to be prejudicial to the maintenance of public order. In respect of two in-camera statements as recorded by sponsoring authority, it was contended that those are individual disputes and could have been taken care of by the ordinary law. It was also contended that the averments made in the statements are too general and vague as to reach to the subjective satisfaction that on account of allegations made in the in-camera statements, the public order was disturbed. It was contended therefore that the subjective satisfaction

of the detaining authority is vitiated and the order is required to be quashed. He placed reliance upon the decision of the Division Bench of this Court in the matter of Ashok Jivraj vs. Police Commissioner, Surat as reported in 2000(1) GLH p. 393.

Controverting the contention on behalf of the petitioner, ld. AGP Mr. Chauhan draw the attention of the court towards the averments made in the statements particularly the phrases used in the in-camera statements that due to the activities of the petitioner, the crowd was gathered and disbursed due to fear and terror of the petitioner and his associates, the people in the locality , due to the fear and terror started running away, the traffic was disrupted, the shops were closed in the area and thus petitioner and his associates created terror and fear in the locality. According to the ld. AGP both the in-camera statements disclosed that the terror and fear was created by the petitioner in the locality, so the shops nearby were closed on account of threat given by the petitioner and tempo of life was adversely affected. According to the ld. AGP the public order was disturbed and the order impugned in this petition is not required to be quashed on that ground. Ld. AGP relied upon three decisions of the Apex Court in the matter of Hasan Khan Ibne Haider Khan vs. R.H. Mendnoca and others, as reported in AIR 2000 SC 1146, in the matter of Smt. Phulwari Jagdambaprasad Pathak vs. R.H. Mendonca and others, as reported in AIR 2000 SC 2527 and in the matter of Amanulla Khan Kudeatalla Khan Pathan vs. State of Gujarat and others, as reported in (1999)5 SCC 613.

Having regard to the contentions raised and to evaluate the contentions, it is necessary to look into the principle laid down by the Apex court in respect of when public order is said to have been disturbed. In the matter of Mrs. Harpreet Kaur Harvinder Singh Bedi vs. State of Maharashtra, as reported in AIR 1992 SC 979, the Apex Court observed as under in para-14:

"14. From the law laid by this court, as noticed above, it follows that it is the degree and extent of the reach of the objectionable activity upon the society which is vital for considering the question whether a man has committed only a breach of 'law and order' or has acted in a manner likely to cause disturbance to 'public order'. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of

'public order'. Whenever an order of detention is grounded fall under the classification of being prejudicial to 'public order' or belong to the category of being prejudicial only to 'law and order'. An order of detention under the Act would be valid if the activities of a detenu affect 'public order' but would not be so where the same affect only the maintenance of 'law and order'. Facts of each case have, therefore, to be carefully scrutinised to test the validity of an order of detention."

It is clear from the above observation that its magnitude, intensity and the length of questionable activity which would decide that whether a person acted in a manner prejudicial to maintenance of public order. The difference between 'public order' and 'law and order' is made clear by the Apex court in the above said decision of Harpreet Kaur. Again in the matter of Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police & Ors., as reported in 1995(2) GLR p. 1268, the Apex court has observed as under in para-9 of the said decision:

9. Further, sub sec. (1) of Sec. 3 of the Act confers power on the State Government and a District magistrate or a Commissioner of Police under the direction of the State Government to detain a person on being satisfied that it is necessary to do so with a view to preventing him from acting in any manner prejudicial to the maintenance of 'public order'. The explanation attached to sub-sec. (4) of Sec. 3 reproduced above in the foregoing para contemplates that 'public order' shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in sub-sec. (4) directly or indirectly, are causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. Sub-Sec. (4) of Sec. 3 also provides that for the purpose of Sec. 3, a person shall be deemed to be 'acting in any manner prejudicial to the maintenance of public order' when such person is a 'dangerous person' and engaged in activities

which affect adversely or are likely to affect adversely the maintenance of public order. It, therefore, becomes necessary to determine whether besides the person being a 'dangerous person' his alleged activities fall within the ambit of the expression 'public order'. A distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection, it may be stated that in order to bring the activities of a person within the expression of 'acting in any manner prejudicial to the maintenance of public order', the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of 'law and order' or it amounts to 'public order'. If the activity falls within the category of disturbance of 'public order' then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality. In the case of Arun Ghosh v. State of W.B., 1970(1) SCC 98 this Court had an occasion to deal with the distinction between law and order and public order. Hidayatullah, C.J.(as he then was), speaking for the Court observed that public order would embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of pubic tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether

> the disturbance amounts only to a breach of law and order. It has been further observed that the implications of public order are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the pubic order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Again in the case of Piyush Kantilal Mehta v. Commissioner of Police, 1989 Suppl. (1) SCC; [1989(1) GLR 563 (SC)], this Court took the view that in order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of pubic order which can be dealt with under ordinary general law of the land."

Reverting to the facts of this case, by no stretch of reasoning it could be said that the fact of registration of crimes against the petitioner under the Bombay Prohibition Act would amount to the activities prejudicial to the maintenance of public order. The grounds served upon the petitioner, it is revealed that the cases were pending when the order came to be served upon the detenu. The crime was registered and, therefore, these activities at the most can be categorized as the problem of law and order. Now, the detaining authority also relied upon two in-camera statements as referred to above. The first statement reveals the incident of 18.5.2003 when the witness was passing through the Amaraiwadi at about 6.00 p.m. in the evening, the petitioner and his associates approached him. The petitioner threatened the witness that the witness knew very well that the petitioner had indulged in activities of selling illegal liquor. The witness was alleged by the petitioner that the witness was keeping watch over the activity of the petitioner and was informing the police. When witness denied that he neither kept any watch over the activity nor he informed

the police and that suspicion of the petitioner in this respect was misplaced, the petitioner and his associates were got excited and started beating the witness. The witness shouted for help and residents of locality and other passerby got together at the place of incident. Therefore, the petitioner took out the knife and threatened the witness to kill and witness requested to release him and by act of supplication, the witness could released himself. The petitioner and his associates also threatened the crowd gathered around with the open knife, so the persons ran away from the place of incident in helter and skelter. The traffic around the place of incident was disrupted and terror and fear was created in the area. While the other witness who narrated the incident occurred on 22.6.2003 stated that on that day at about 13.00 hrs. he parked his vehicle near the bus-stand. The petitioner and his one associate approached him and asked for the vehicle of the witness for some hours for transporting the illegal liquor. The witness refused the demand of the petitioner and on such refusal the petitioner and his associates were got excited. The witness was taken out of his vehicle and was brought to the public road and was beaten.The witness shouted for help. The residents of locality and other persons gathered around the place of incident. The petitioner and his associate took out thereafter knife and threatened the witness to kill. Thereupon the witness requested to release him and by this act of witness, the witness was released by them. The petitioner and his associate also threatened the crowd with knife due to which the persons gathered around ran away from the place of incident. This caused disruption of traffic in the area. Atmosphere of terror and fear was created by the petitioner and, therefore, the business transactions were closed around the place of incident.

Now, these are the facts of the statements on which the detaining authority reached to the subjective satisfaction that due to the activity of the petitioner, the public order was disturbed. When the facts of this case are evaluated by the principles laid down by the Apex Court in the above said two decisions of Harpreet Kaur (supra) and Mustakmiya Jabbarmiya (supra), it clearly appears that narration of witnesses before the sponsoring authority is nothing more than the individual disputes with the witnesses where it cannot be said that large section of society was affected on account of the activity of the petitioner as revealed from the in-camera statements. If the statements are taken to be true on their face value, when potentiality of the activities are

taken into consideration, it transpires that the petitioner and their associates has nothing to do with the large section of the society. In both the occasions the petitioner had illegal expectation from each of the witness individually and intention was never to create terror among the locality. Only when crowd was gathered, force was used to disburse the same. When it is examined that what is the degree and extent of reach of objectionable activities, it is undoubtedly found that the activities had very temporary effect on the locality. It is nowhere laid down that petitioner and his associates remained in locality for longer period as to paralyse the safety of the tempo of the public life. There is no material emanating either from the statements of the witnesses or from the fact of registration of crimes under the Bombay Prohibition Act against the petitioner, that the impact of activities attributed to the petitioner was such as they travel beyond the capacity of law to deal with the petitioner or to prevent his subversive activities affecting the community at large or even disturbing the tempo of life. The activities alleged against the petitioner alone cannot determine its gravity. The potential effects of the activities when jeopardize the public tranquility, activities can be said to be so deeper as to disturb the public order. Threatening the crowd to disburse so as to prevent it from rescuing the petitioner is not the activity of the magnitude to embrace within the scope of disturbing the "public order". Further it is not the phraseology which is used in the statements which should weigh with the court but the substance of the material must be taken into consideration. In the similar circumstances, in the matter of Piyush Kantilal v. Commissioner of Police, Ahmedabad city, as reported in AIR 1989 SC 491, the Supreme Court observed as under in para-15 and 18:

> "15. It is also alleged in the grounds of detention that the petitioner, his servants and associates indulge in the use of force and violence and also beat innocent citizens by which an atmosphere of fear is created and by indulging in such activities, the petitioner is causing hindrance to the maintenance of public order. It is further alleged that the petitioner shows dangerous weapons to the citizens and thereby creates an atmosphere of fear. These allegations are very general in character without reference to any particular incident or incidents in support of such allegations. The detaining authority has sought to substantiate the said

allegations and connect the activities of the petitioner with the question of maintenance of public order by the statements of five witnesses. Apart from some minor incidents of beating by the petitioner, the witnesses have alleged that the petitioner is high-handedness and bickering nature have caused terror to the public of the area; he is not afraid of the police; his activities are anti-social; he always keeps with him a knife and a revolver and he threatens surrounding people.

18. In the instant case, the detaining authority, in our opinion, has failed to substantiate that the alleged anti-social activities of the petitioner adversely affect or are likely to affect adversely the maintenance of public order. It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of S.2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of S.3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. We have carefully considered the offences alleged against the petitioner in the order of detention and also the allegations made by the witnesses and, in our opinion, these offences or the allegations cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order. The order of detention cannot, therefore, be upheld."

Relying upon this decision, Division Bench of this Court in the matter of Ashok Jivraj @ Jivabhai Solanki vs. Police Commissioner, Surat & Ors., as reported in 2000(1) GLH 393, observed in para-21 that opinion of the Supreme Court in the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of

public order. When both the statements are kept in juxtaposition, similar allegations appear to have been made against the petitioner. When the incidents are evaluated it clearly establishes that the quarrel with the witness started with individual cause in each separate incident. It is not the repetitive tendency of the petitioner to create terror and fear in same locality which is not at all alleged in those statements. Using the phraseology as a sequel of the quarrel about disrupting of traffic and closing of business transaction would not at all take out the case from that of law and order to the public order. It is the substance of the allegations which is required to be taken into consideration. In the cases relied upon by the ld. AGP in the matter of Amanulla Khan Kudeatalla Khan Pathan vs. State of Gujarat & Ors., (supra) from the facts of that case, when there were statements before the detaining authority to come to the conclusion that the detenu was habitually extorting money from the people who were engaged in building construction business, the Supreme court observed that the detenu was in habit of forming a gang and hatched a conspiracy to extort money from innocent citizen by threatening them and keeping them under constant fear and terror and in those circumstances the Apex Court in facts of that particular case held that the activities of the detenu amounted to prejudicial to public order. In second decision in the matter of Hasan Khan Ibne Haider Khan vs. R.H. Mendnoca and others, (supra) on similar facts to the case of Amanullakhan (supra), the Apex Court came to the conclusion that the detenu and his associates used to collect money from the businessmen on threat of assault and fear of the appellant none could dare to inform the police. In para-9 of the said decision, the Apex Court observed as under which would make it amply clear that the facts of the case on hand and the facts of the case, in the matter of Hasan Khan Ibne Haider Khan vs. R.H. Mendnoca and others (supra) are absolutely different.

> "9. Applying the above ratio to the grounds of detention, we find that the appellant extorted money from businessmen and also gave threats to the people at the public place and thereby undoubtedly affected the even tempo of life of the society, therefore, such activities cannot be said to be mere disturbance of law and order. The contention of Mr. Jain has no force."

In third decision also the allegations against

the detenu were that the detenu was along with his associates as Gundas moved in the area Khar (East) armed with weapons and collected money from traders, businessmen and residents of the said locality. Upon above said facts, the Apex Court in the above matter came to the conclusion that the detenu was persistently engaged in criminal activities which adversely affected the maintenance of public order in the locality, not only cases came to be registered in this respect against the detenu but the statements to that extent were also recorded by the sponsoring authority that the detenu was dangerous person and repeatedly engaged in the activities of extorting money by threats and was moving in certain locality with his associates lashed with the arms and from the above facts, the Supreme court concluded that the detaining authority came to the right conclusion that the activities of the detenu in that case was prejudicial to the maintenance of public order.

While in this case, only some prohibition cases are registered against the petitioner and two statements recorded in in-camera even though some phraseology has been employed by the sponsoring authority to the extent that the traffic in the local area was disrupted and the business transactions had been closed on account of terror and fear created by the petitioner would hardly lead to the conclusion having regard to the substance of the statements that the activities of the detenu can be categorized to be the activities prejudicial to the maintenance of public order. In this view of the matter, the subjective satisfaction of the detaining authority that the bootlegging activities of the petitioner were prejudicial to the maintenance of public order is vitiated. The impugned order is required to be quashed on this ground alone.

In the result, this petition is allowed. The order impugned in this special civil application passed on 23.6.2003 by the Police Commissioner, Ahmedabad city under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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